

JUL 31 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FERNANDO RUIZ-GARCIA,

Defendant - Appellant.

No. 07-50429

D.C. No. CR-04-02847-WQH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Fernando Ruiz-Garcia appeals from the 21-month sentence imposed upon revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291, and we affirm.

Ruiz-Garcia contends that the district court failed to consider the factors set forth in 18 U.S.C. §§ 3553(a) and 3583(e) and failed to explain why those factors justified the sentence it imposed. Ruiz-Garcia further contends that his 21-month sentence, imposed consecutively to his sentence for the underlying offense, is unreasonable in light of the applicable § 3553(a) factors. We conclude that the district court did not commit procedural error and that Ruiz-Garcia's sentence is substantively reasonable. *See Rita v. United States*, 127 S. Ct. 2456, 2468-69 (2007); *see also United States v. Simtob*, 485 F.3d 1058, 1061-64 (9th Cir. 2007); *United States v. Fifield*, 432 F.3d 1056, 1063-66 (9th Cir. 2005).

Ruiz-Garcia also contends that the supervised release regime violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000). This contention is foreclosed. *See United States v. Santana*, 526 F.3d 1257, 1262 (9th Cir. 2008).

AFFIRMED.